

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL RODRIGUEZ,

Plaintiff,

v.

DR. RANDOLL GO, et al.

Defendants.

No. C 06-3416 MMC

**ORDER DISMISSING COMPLAINT
WITHOUT LEAVE TO AMEND;
DENYING APPLICATION TO PROCEED
IN FORMA PAUPERIS**

Before the Court is plaintiff Daniel Rodriguez's complaint and application to proceed in forma pauperis, both filed May 25, 2006. When a party seeks to proceed in forma pauperis, the district court is required to dismiss the case if the court determines that the plaintiff fails to state a claim upon which relief can be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain a "short and plain statement of the grounds upon which the court's jurisdiction depends." See Fed. R. Civ. Proc. 8(a)(1). Plaintiff's complaint fails to comply with this requirement.

Plaintiff's sole allegation is that defendants committed malpractice when they failed to correctly diagnose and treat his glaucoma, causing him to suffer irreparable harm. "[M]edical malpractice claims do not present a federal question." Olsen v. Quality Continuum Hospice, Inc., 380 F. Supp. 2d 1225, 1231 (D. N.M. 2004) (citing cases).


1 Consequently, this Court lacks federal question jurisdiction over plaintiff's claim. See id.

2 No other basis for jurisdiction is present. Plaintiff alleges he resides in California and
3 that both defendants have California addresses. Consequently, diversity of citizenship is
4 lacking. Cf. 28 U.S.C. § 1332(a)(1) (providing district court has jurisdiction over action
5 between citizens of different states, where claim exceeds \$75,000).

6 Accordingly, plaintiff's complaint is hereby DISMISSED without leave to amend and
7 without prejudice to plaintiff's filing his claim in state court. In light of the dismissal,
8 plaintiff's application to proceed in forma pauperis is DENIED as moot.

9 **IT IS SO ORDERED.**

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11 Dated: June 13, 2006


MAXINE M. CHESNEY
United States District Judge